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Published in:
Journal of Medical Ethics

DOI:
[10.1136/medethics-2020-106078](https://doi.org/10.1136/medethics-2020-106078)

Publication date:
2020

Document Version
Early version, also known as pre-print

Citation for published version (APA):
Lippert-Rasmussen, K., & Petersen, T. S. (2020). Age change, official age and fairness in health. *Journal of Medical Ethics*, 46(9), 636-637. <https://doi.org/10.1136/medethics-2020-106078>

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Age change, official age and fairness in health

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Journal of medical ethics – 20 Mar 2020

<http://dx.doi.org/10.1136/medethics-2020-106078>

Abstract: In a recent JME article, Joona Räsänen makes the case for allowing legal age change. We identify three problems with his argument and, on that basis, propose an improved version thereof. Unfortunately, even the improved argument is vulnerable to the objection that chronological age is a better proxy for justice in health than both legal and what we shall call official age.

Keywords: age change, age discrimination, age and justice, ageism, justice in health.

Introduction

Dutchman Emile Ratelband took to the courts to have the state reduce his age (69) by 20 years to avoid (perceived) age discrimination. Against this backdrop, in a recent JME article Joona Räsänen makes the following interesting case for legal age change, where to ‘change one’s legal age... would mean to change one’s birth date’ in official documents[1]:

- ‘P1) Legal age is a cause of severe discrimination for some people whose biological and emotional age do not match their chronological age.
- P2) People should be allowed to secure relief from severe discrimination against them unless this has excessive consequences.
- P3) Changing a person's legal age would not, in the case of people whose biological and emotional age do not match their chronological age, have excessive consequences.
- C) People whose biological and emotional age do not match their chronological age should be allowed to change their legal age in order to secure relief from discrimination.’

Critics have identified various problems with Räsänen’s argument. However, these problems can be accommodated by an argument which is quite close to Räsänen’s. Unfortunately, this revised argument is defeated by a different objection in healthcare settings. In these settings, there is a strong reason in favour of treating people on the basis of their chronological age and, thus, not permitting age change.

An improved case against chronological age

There are three problems with Räsänen’s argument. First, the argument as stated is invalid, because it rests on a suppressed premise asserting that legal age change secures relief from severe age discrimination. Some critics doubt that it would and argue that it is preferable to eliminate unjust age discrimination altogether[2]. The last point might be true. However, eliminating unjust age discrimination is difficult. Hence, Räsänen might simply restrict the scope of his argument to non-ideal situations in which, regrettably, severe age discrimination exists. The former point is correct. Adjusting one’s legal age is not a guarantee against age discrimination. Still, the argument could work with the weaker assumption that age adjustment provides *some relief* or relief for *some people*[3].

Second, while P3 might be true, its scope is problematically restricted to ‘people whose biological and emotional age do not match their chronological age’. However, other people too ‘should be allowed to secure relief from severe [age] discrimination’ when this does not have ‘excessive consequences’[4]. In defence of his restriction of the scope of P3, Räsänen mentions the desirability of avoiding abuse of the option of legal age change, but it is unclear why this concern

cannot be addressed simply by the requirement that no-legal/experienced age-gap people document their predicament discrimination-wise when applying for age change.

Third, some critics believe that P3 is false because it implicates the state in lying, since to change someone's legal age the state must change this person's date of birth on official documents[5]. Whether this is morally objectionable or not, an argument which is in the spirit of Räsänen's is immune to this objection. That argument concerns citizens' official age. We define, stipulatively, official age as the date-of-birth-independent age that the state ascribes to its citizens. As a default that age could, but need not, be one's chronological age, or, in cases where a person is granted a different age to gain some relief from age discrimination, a different one. Like legal age in Räsänen's sense – 'the number one gets by subtracting one's [legally acknowledged] birth date from the current date'[5] – official age can deviate from chronological age. Unlike legal age in Räsänen's sense, official age is not tied to date of birth and, thus, does not imply that official documents state a date of birth, e.g., they could simply state one's official age in the year the document is issued. Whatever the merits of the notion of official age, it cannot be dismissed on the ground that its adoption results in the state becoming complicit in lying. Anyone would acknowledge official age as a date-of-birth-independent legal construction. Thus, to accommodate the three objections above we could embrace the following simple and clearly valid modus ponens (the official age argument):

P2*) If the following conditional is true – if the state were to treat citizens on the basis of their official age and if people were allowed to change their legal age in order to secure some relief from discrimination, then it would secure people some relief from severe and otherwise unavoidable discrimination against them without excessive consequences – then the state should treat citizens on the basis of their official age and people should be allowed to change their legal age in order to secure some relief from discrimination.

P3*) If the state were to treat citizens on the basis of their official age and if people were allowed to change their official age in order to secure some relief from discrimination, then it would secure people some relief from severe and otherwise unavoidable discrimination against them without excessive consequences.

C*) The state should treat citizens on the basis of their official age and people should be allowed to change their official age in order to secure some relief from discrimination.

Why it would be unjust for the healthcare system to treat people on the basis of official age

Unfortunately, P3* is false. When it comes to scarce health care resources, if the state were to set health care priorities on the basis of official age it would amount to an injustice which plausibly qualifies as an 'excessive consequence'. Consider a situation where a number of scarce life-saving organs must be distributed by a public healthcare system among two groups of patients. Everyone has the official age of 50. However, members of the first group have the chronological age of 70, while members of the second have the chronological age of 40. Suppose that everyone will enjoy an extra 10 good life years if they receive an organ. On the official age argument, implausibly the state should not decide this issue on the basis of chronological age. Yet members of the first group have enjoyed 30 more good life years than members of the second group, and that is relevant for who should receive the available organs, justice-wise. Even if a member of the second group were to receive an organ, she would still not have enjoyed as many good life years as members of the first group who do not receive one. Hence, P3* (and, in our view, C* too) is false.

This view is true on a wide range of different accounts of justice in healthcare. First, if justice requires equalizing bad brute luck across patients, generally, we should give priority to younger (chronological age-wise) patients over older patients[6]. Second, on the view that priority should be given to the worse off (where one is worse off the worse one's life as a whole is), the

same conclusion follows[7]. Finally, on the ‘fair innings view’, according to which justice requires that everyone enjoys a sufficient number of good life years, justice requires taking into account chronological age in our scenario, if 60 good life years is what a fair inning amounts to[8].

On all of these views, chronological age is a better proxy for what matters from the point of view of justice than official age (and, for that matter, legal age). Indeed, this is so if neither of these views exhausts justice in healthcare, but only captures one component in it alongside other components, e.g., a requirement to the effect that everyone enjoys some chance, though possibly a discounted chance in the case of those who are octogenarians in terms of their chronological age, of being given a life-saving operation[9].

Hence, in important healthcare settings the state should treat people on the basis of their chronological age rather than official age, when it should treat patients (partly) on the basis of age. Perhaps there are other contexts in which the state should treat people on the basis of their official, rather than their chronological, age (or, for that matter, not treat on the basis of any notion of age at all). Hence, one might either see our argument as an objection to Räsänen’s argument or, alternatively, as a friendly, but for healthcare purposes, crucial amendment[1].

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¹ We thank Andreas Albertsen, Andreas Bengtson, Göran Duus-Otterström, Søren Flinch Midtgaard, Lauritz Munch, Lasse Nielsen, Viki Pedersen, and Fabio Wolkenstein for helpful comments. We are also grateful to Joona Räsänen for perceptive written comments on a previous version of this paper.